It is submitted, however, that this legislation more nearly resembles the class of legislation upheld by the United States Supreme Court in the case of *Charlotte Railroad Co. v. Gibbs*,[14] whereby the railroads of the South Carolina were assessed the cost of the upkeep of a state railroad commission, or that which fixes a minimum wage for laborers employed by the municipality for the benefit of the property of an individual, against whose property the wage is assessed as a special tax, or who can be required to pay under a valid exercise of police power, provided the duty performed by the public servant comes within its scope. Or, as is said by the United States Supreme Court in the case of *Atkin v. Kansas*,[15] "The power belongs to a state as guardian of the people to prescribe conditions upon which public work will be done in its behalf, or on behalf of its municipalities," and adds that the manner of payment does not as such change the character of the work. Legislation of this class is upheld in *Malette v. Spokane*.[16] C. W. B. T.

DAMAGES FOR INCONVENIENCE AND ANNOYANCE BY WRONGFUL ACT OF TELEPHONE COMPANY.—It seems from a recent decision of the Court of Civil Appeals of Texas that a person can now recover damages for an injury to his temper, at least if the offending party happens to be a telephone company. In *Southwestern Telegraph and Telephone Co. v. Riggs*,[1] a verdict of $250 for vexation, annoyance and inconvenience, caused by the Telephone Co. wrongfully disconnecting the plaintiff's phone, was upheld as supported by the evidence and not so excessive as to show passion or prejudice.

That a telephone company can be held liable in a tort action for annoyance and inconvenience to a subscriber by wrongfully disconnecting his phone, as well as for actual pecuniary loss, is now fairly well established.[2] But as Pleasants, C. J. points out in his able dissenting opinion, the evidence in the principal case shows no inconvenience resulting directly from the plaintiff's inability to use his phone, and shows only the deleterious effect on the plaintiff's disposition caused by the untactful manner of the company's officials.

The plaintiff had in fact paid his bill, but the defendant's bookkeeper had accidentally credited the payment to "Capital 1923" instead of to "Capital 1928," the plaintiff's number, so that when the plaintiff tried to call his home from his office he was informed that his phone had been disconnected on account of

[14]142 U. S. 386 (1892).
[15]191 U. S. 207 (1903).
[16]77 Wash. 205, 137 Pa. 496 (1913), 51 L. R. A. (N. S.) 686.
[1]216 S. W. 403 (Tex. 1919).
[2]Carmichael v. Bell Telephone Co., 157 N. C. 21, 72 S. E. 619 (1911); Harbaugh v. Citizens' Telephone Co., 190 Mich. 421, 157 N. W. 32 (1916); Sommerville v. Chesapeake & Potomac Telephone Co., 258 Fed. 147 (1919).

non-payment of the bill. He then appealed from the operator to the cashier and to the manager, who refused to accept his word that he had paid the bill, and told him to bring his receipt to the office. He was too busy to do so, and was therefore unable to talk to his wife until the defendant's agents discovered the error and reconnected the phone an hour later.

There is, however, no evidence that the plaintiff sustained any loss or damage by reason of not being able to talk to his wife. It is not even averred that he went to the trouble of sending a message to her by some other means. The injury that he complained of was not the loss of the phone service for a short time, but the insult, as he conceived it, of being told that he had not paid his bill, and of having his word doubted when he said that he had. As stated in the plaintiff's own testimony: "The fact that they told me I had not paid the bill was an insult to me. . . . It certainly did ruffle my feelings; the cashier spoke so sarcastic and cold-blooded." The plaintiff sought and obtained redress, not for the infringement of his contractual right to uninterrupted phone service, but for the injury to his temper caused by the attitude of the cashier.

If the wounding of pride is to be made the basis for recovery in a tort action, even if confined to cases where the offending party is in privity of contract with the plaintiff, to what lengths may not the law go? The rent of the telephone for the time it was disconnected was computed at twenty cents, and this amount was tendered by the defendant as damages for the admitted breach of the contract.

In the case of *Cumberland Telegraph & Telephone Co. v. Hobart*[3] chiefly relied on by the majority of the Court, a verdict of $150 for annoyance and inconvenience was upheld, when the defendant wrongfully disconnected the plaintiff's phone. But this case falls far short of supporting the decision of the principal case. The phone had been disconnected, not by a mistake, but for the wrongful purpose of coercing the plaintiff into paying a bill for another phone which was rented by his wife. It was disconnected for three or four months, and the plaintiff was subjected to the real and tangible inconvenience of walking or hiring a messenger for his errands which otherwise would have been accomplished by telephone, and not merely to the subjective annoyance of losing his temper and feeling chagrined.

On the other hand, in the case of *Cumberland Telegraph & Telephone Co. v. Hendon*,[4] where a mistake of the bookkeeper caused the defendant to disconnect the plaintiff's phone for a space of eighteen hours, there being no proof of pecuniary loss but considerable real inconvenience, the plaintiff being a physician, a verdict of $200 was set aside and the case remanded with in-

[3] 89 Miss. 252, 42 So. 349 (1906).
[4] 114 Ky. 501, 71 S. W. 435 (1903).

structions that the plaintiff was entitled only to the proportionate amount of the rent of the telephone for the time its use was lost. So in *Jenkins v. Southern Bell Telegraph & Telephone Co.*[5] a verdict of thirty cents was sustained as not inadequate, on appeal by the plaintiff, where the defendant through a misunderstanding of a remark made by the plaintiff removed the phone from the plaintiff's house, there being no evidence of special damage. So also it has been held that exemplary or punitive damages cannot be awarded against a telephone company for removing a subscriber's telephone unless shown that the removal was an intentional wrong.[6]

The Court in the majority opinion confessed that they were "laboring under some doubt as to the correctness of their conclusions." There was no room here for exemplary damages, nor was the claim put on that ground, since the defendant's wrongful act was due to a mistake. The error in allowing the $250 as compensatory damages is not that damages are not recoverable for annoyance and inconvenience, for the weight of authority and even the dissenting opinion hold that they are so recoverable, but that the evidence in this case shows no appreciable annoyance and inconvenience caused by the disconnecting of the plaintiff's phone. What the decision really does, then, is to allow recovery for the annoyance caused by the rude manner of the defendant's agents. To establish such a doctrine as this would mean to open the door to damage suits for an infinite variety of intangible grievances and "insults" which have heretofore been considered of too small importance to be settled in a court of law.

E. C. L.

RIGHT TO TRIAL BY JURY IN WILL CASES UNDER THE PENNSYLVANIA CONSTITUTION.—The question as to the right to trial by jury in will cases under the Constitution of the State of Pennsylvania has been raised in that jurisdiction by a recent case, *Fleming's Estate*,[1] in which a vigorous dissenting opinion maintained that there is such a right, at least to determine whether the signature is true or forged.

In 1832, the Pennsylvania legislature provided that the court shall grant an issue for determination of the question by a jury "whenever a dispute upon a matter of fact arises before any register's [orphans'] court."[2] This statute has been interpreted by a long series of cases to mean "a substantial dispute upon a material

[5]7 Ga. App. 484, 67 S. E. 124 (1910).

[6]Cumberland Telephone & Telegraph Co. v. Baker, 85 Miss. 486, 37 So. 1012 (1904); Horsfield v. Missouri & Kansas Telephone Co., 101 Kan. 481, 168 Pac. 316 (1917).

[1]Fleming's Estate, 265 Pa. 399 (1919).

[2]Act March 15, 1832, Sec. 41, P. L. 146; 4 Purd. Dig. 4088. This act has been included with slight verbal changes in the codification of the Law of Decedents' Estates as Section 21 (b) of the Orphans' Court Act (Act June 7, 1917, P. L. 363).